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VIA Federal eRulemaking Portal:

January 2, 2024

Employee Benefits Security Administration
Office of Regulations and Interpretations
Office of Exemption Determinations
U.S. Department of Labor
Federal eRulemaking Portal
RIN 1210-AC02
Application Nos. D-12057, D-12060 and D-12094
Attention: Definition of Fiduciary

**Re: Proposed Definition of ERISA "Investment Advice" Fiduciary and
Related Exemptions for Conflicted Investment Advice**

To Whom It May Concern:

On November 3, 2023, the Department of Labor (the "Department") published its notice of proposed rulemaking regarding, and offered for comment its third iteration of, a revised regulation defining "investment advice for a fee" under section 3(21) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Department simultaneously proposed for comment revisions to its existing Prohibited Transaction Exemption ("PTE") 2020-02, 84-24, 75-1, 77-4, 80-83, 83-1 and 86-128 (together with the proposed regulation, the "Proposal").¹

On behalf of the Atria Wealth Solutions independent broker/dealers and SEC-registered investment advisers, specifically, Cadaret Grant & Co., NEXT Financial Group, Inc., SCF Securities, Inc. and SCF Investment Advisors, Inc., Western International Securities, Inc., Grove Point Investments, LLC, Grove Point Advisors, LLC, CUSO Financial Services, L.P., and Sorrento Pacific Financial, LLC, (collectively, the "Firms") we appreciate the opportunity to comment on the Proposal and note our collective agreement with the factual and legal considerations and points detailed in the extensive comment letter filed by The Financial Services Institute ("FSI") earlier today, January 2, 2024. The Firms collectively serve the needs of U.S. investors by providing individualized services and support to over 2,700 financial professionals.

¹ 88 Fed. Reg. 75890 et seq. (Nov. 3, 2023).

On behalf of the Firms, we respond to the Proposal separately for the purpose of providing our additional support for the key points and issues set forth in the FSI comment letter, highlighting the negative impact the Proposal would have on retirement investors, broker-dealers, and investment advisers, and accordingly, we implore the Department to withdraw the Proposal as currently drafted.

As the FSI comment letter highlights:

- The Proposed Rule is inconsistent with the Employee Retirement Income Security Act of 1974 (ERISA).
- The DOL is not the appropriate “standard of conduct” regulator for the financial services industry; that responsibility falls under the SEC’s jurisdiction.
- The Proposed Rule would create a more complicated and costly regulatory regime.
- The SEC’s Reg BI and the DOL’s existing PTE 2020-02 achieve the more appropriate balance, while the Proposed Rule would create unnecessary costs and requirements.
- The regulatory impact statement’s cost/benefit analysis lacks empirical support and substantially underestimates the costs of the Proposed Rule.
- Preparation for and compliance with the final rule requires appropriate and adequate time to allow for the awareness, understanding, preparation and implementation of necessary changes and adjustments for all affected parties to properly adhere to the regulation.

The Firms believe that the Department should withdraw the Proposal for the above reasons and those fully set forth and detailed in the FSI comment letter. We respectfully propose that the Department should recognize the substantial and important protections that are already in place through the existing regulatory framework, laws, rules, and requirements, and should tailor any future rulemaking to avoid conflicts with existing law, rules, and regulations.

The Firms are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Department on this effort and to participate in further discussions regarding these important issues and other regulatory efforts.

We look forward to continued consideration and evaluations of the FSI letter and similar advocacy in this regard.

Thank you.

Respectfully submitted,

DocuSigned by:

Amanda Hawley

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